

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

EARL PARRIS, JR., individually,
and on behalf of a class of persons
similarly situated,

Plaintiff,

V.

3M COMPANY, *et al.*,

Defendants.

Case No. 4:21-cv-00040-TWT

DEFENDANTS 3M COMPANY’S AND DAIKIN AMERICA, INC.’S
MOTION AND SUPPORTING MEMORANDUM TO STRIKE OR
DISREGARD THE CITY OF SUMMERVILLE’S REPLY TO DEFENDANT
MT. VERNON MILLS, INC.’S OPPOSITION TO MOTION TO
INTERVENE

Defendants 3M Company (“3M”) and Daikin America, Inc. (“Daikin”) move the Court to strike non-party the City of Summerville’s Reply to Defendant Mt. Vernon Mills Inc.’s Opposition to Motion to Intervene [ECF No. 127] as procedurally and substantively improper. The Reply Brief is untimely, exceeds the page limitation set by the Local Rules, and is comprised entirely of improper argument in opposition to the Manufacturing Defendants’ pending motions to dismiss Plaintiff’s complaint. In support of this Motion, 3M and Daikin show the Court the following:

1. On May 4, 2021, the City of Summerville filed a Motion to Intervene in this action as a party plaintiff. [ECF No. 79.] That motion is pending and Summerville has not been granted party status. Mr. Parris is the sole Plaintiff in the case.

2. On May 13, 2021, Defendants, including 3M and Daikin and the other Manufacturing Defendants, filed motions to dismiss. [ECF Nos. 86-92.]

3. On May 18, 2021, Defendant Mt. Vernon Mills, Inc. (“Mt Vernon”) filed its opposition to Summerville’s Motion to Intervene.¹ The opposition to Summerville’s intervention argued that ruling on the Motion to Intervene would be premature given the pending motions to dismiss and the likelihood that the motions would be granted and the case dismissed. [ECF No. 94 at 4.] Pursuant to LR 7.1C, NDGa, any reply to Mt. Vernon’s opposition had to be filed within 14 days. Summerville’s reply was therefore due on or before June 1, 2021.

4. On November 15, 2021, almost six months after its reply was due, Summerville filed its untimely reply to Mt. Vernon’s opposition. In addition, LR 7.1D, NDGa, provides that a reply may not exceed 15 pages, but Summerville’s brief

¹ 3M and Daikin both filed responses to the Summerville’s Motion to Intervene, stating that they did not oppose intervention but reserved all rights and defenses, including the right to file a motion to dismiss if Summerville’s motion to intervene were granted. [ECF Nos. 96 & 97.]

is 25 pages. Summerville has therefore filed an untimely reply brief that exceeds the Court's page limitation by ten pages, and the brief should therefore be stricken or disregarded. *See* LR 7.1F, NDGa ("The Court, in its discretion, may decline to consider any motion or brief that fails to conform to the requirements of these rules."); *United States v. Torres*, No. 1:06-CR-00351-WSD-LTW, 2008 WL 11380151, at *4 (N.D. Ga. Mar. 21, 2008), *report and recommendation adopted*, No. 1:06-CR-351-WSD, 2008 WL 11380103 (N.D. Ga. Oct. 9, 2008) (striking untimely response that exceeded page limitation).

5. Rather than reply to Mt. Vernon's argument that a ruling on the motion to intervene would be premature, Summerville uses its 25-page brief to argue against the Manufacturing Defendants' motions to dismiss *Plaintiff Parris'* complaint. Those motions were fully briefed as of June 2021 and are awaiting ruling by the Court. This is a transparent attempt by Summerville, a non-party, to use a late-filed purported "reply" months after the briefing has closed to argue in support of Plaintiff Parris' opposition to the pending motions to dismiss. It is apparent that Summerville's reply brief was filed for an improper purpose, and it should therefore be stricken or disregarded for that reason as well.

Wherefore, 3M and Daikin respectfully request that the Court strike the City of Summerville's putative reply to Defendant Mt. Vernon's Opposition to Motion to Intervene.

Respectfully submitted this 19th day of November, 2021.

/s/ Robert B. Remar

Robert B. Remar, GA Bar No. 600575
S. Gardner Culpepper, GA Bar No. 201210
Monica P. Witte, GA Bar No. 405952
Katherine L. D'Ambrosio, GA Bar No. 780128
ROGERS & HARDIN LLP
229 Peachtree Street, N.E.
Atlanta, GA 30303
Telephone (404) 522-4700
Email: rremar@rh-law.com
Email: sculpepper@rh-law.com
Email: kdambrosio@rh-law.com
Email: mwitte@rh-law.com

Jackson R. Sharman, III, GA Bar No. 637930
Benjamin P. Harmon, GA Bar No. 979043
Harlan I. Prater,
Pro Hac Vice application forthcoming
M. Christian King,
Pro Hac Vice application forthcoming
W. Larkin Radney,
Pro Hac Vice application forthcoming
LIGHTFOOT, FRANKLIN & WHITE LLC
The Clark Building
400 20th Street North
Birmingham, AL 35203
Telephone: (205) 581-0700

Email: jsharman@lightfootlaw.com

Email: bharmon@lightfootlaw.com

Email: hprater@lightfootlaw.com

Email: cking@lightfootlaw.com

Email: lradney@lightfootlaw.com

Counsel for Defendant 3M Company

/s/ Theodore M. Grossman

Theodore M. Grossman, *Pro Hac Vice*

JONES DAY

250 Vesey Street

New York, NY 10281

Telephone: (212) 326-3480

Email: tgrossman@JonesDay.com

Richard H. Deane, Jr.

JONES DAY

1221 Peachtree Street, N.E.,

Suite 400

Atlanta, Georgia 30361

Telephone: (404) 521-3939

Email: rhdeane@jonesday.com

Steven F. Casey, *Pro Hac Vice*

Kary Bryant Wolfe, *Pro Hac Vice*

William Underwood, GA Bar No. 401805

JONES WALKER LLP

420 20th Street North, Suite 1100

Birmingham, AL 35203

Telephone: (205) 244-5200

Email: scasey@joneswalker.com

Email: kwolfe@joneswalker.com

Email: wunderwood@joneswalker.com

Chris Yeilding, *Pro Hac Vice*

BALCH & BINGHAM LLP

1901 Sixth Avenue North, Suite 1500
Birmingham, AL 35203-4642
Telephone (205) 226-8728
Email: cyeilding@balch.com

Counsel for Defendant Daikin America, Inc.

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3M COMPANY, <i>et al.</i> ,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE
AND COMPLIANCE WITH LOCAL RULE 5.1

I hereby certify that I have this date electronically filed the within and foregoing, which has been prepared using 14-point Times New Roman font, with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

Dated: November 19, 2021

/s/ Robert B. Remar
Robert B. Remar, GA Bar No. 600575
S. Gardner Culpepper, GA Bar No. 201210
Monica P. Witte, GA Bar No. 405952
Katherine L. D'Ambrosio, GA Bar No. 780128
ROGERS & HARDIN LLP
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Email: rremar@rh-law.com

Email: sculpepper@rh-law.com

Email: kdambrosio@rh-law.com

Email: mwitte@rh-law.com

Counsel for Defendant 3M Company